

§ 17.3

21 CFR Ch. I (4–1–14 Edition)

CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS—Continued

U.S.C. Section	Former maximum penalty amount (in dollars)	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
333 note .....	2,000	For the fourth violation within a 24-month period by a retailer with an approved training program.	2009	2,000 (not adjusted).
333 note .....	5,000	For the fifth violation within a 36-month period by a retailer with an approved training program.	2009	5,000 (not adjusted).
333 note .....	10,000	For the sixth or subsequent violation within a 48-month period by a retailer with an approved training program.	2013	11,000.
333 note .....	250	For the first violation by a retailer without an approved training program.	2009	250 (not adjusted).
333 note .....	500	For the second violation within a 12-month period by a retailer without an approved training program.	2009	500 (not adjusted).
333 note .....	1,000	For the third violation within a 24-month period by a retailer without an approved training program.	2013	1,100.
333 note .....	2,000	For the fourth violation within a 24-month period by a retailer without an approved training program.	2009	2,000 (not adjusted).
333 note .....	5,000	For the fifth violation within a 36-month period by a retailer without an approved training program.	2009	5,000 (not adjusted).
333 note .....	10,000	For the sixth or subsequent violation within a 48-month period by a retailer without an approved training program.	2013	11,000.
335b(a) .....	300,000	Per violation for an individual .....	2013	325,000.
335b(a) .....	1,200,000	Per violation for “any other person” .....	2013	1,275,000.
360pp(b)(1) .....	1,100	Per violation per person .....	2008	1,100 (not adjusted).
360pp(b)(1) .....	355,000	For any related series of violations .....	2013	375,000.
<b>42 U.S.C.</b>				
263b(h)(3) .....	11,000	Per violation .....	2008	11,000 (not adjusted).
300aa–28(b)(1) .....	120,000	Per occurrence .....	2013	130,000.

§ 17.3 Definitions.

The following definitions are applicable in this part:

(a) For specific acts giving rise to civil money penalty actions brought under 21 U.S.C. 333(g)(1):

(1) *Significant departure*, for the purpose of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from requirements that is either a single major incident or a series of incidents that collectively are consequential.

(2) *Knowing departure*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from a requirement taken: (a) With actual knowledge that the action is such a departure, or (b) in deliberate ignorance of a requirement, or (c) in reckless disregard of a requirement.

(3) *Minor violations*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(ii),

means departures from requirements that do not rise to a level of a single major incident or a series of incidents that are collectively consequential.

(4) *Defective*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(iii), includes any defect in performance, manufacture, construction, components, materials, specifications, design, installation, maintenance, or service of a device, or any defect in mechanical, physical, or chemical properties of a device.

(b) *Person* or *respondent* includes an individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit thereof, or other legal entity, or as may be defined in the act or regulation pertinent to the civil penalty action being brought.

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(c) *Presiding officer* means an administrative law judge qualified under 5 U.S.C. 3105.

(d) Any term that is defined in the act has the same definition for civil money penalty actions that may be brought under that act.

(e) Any term that is defined in Title 21 of the Code of Federal Regulations has the same definition for civil money penalty actions that may arise from the application of the regulation(s).

(f) Any term that is defined in the PHS Act has the same definition for civil money penalty actions that may be brought under that act.

(g) *Departmental Appeals Board (DAB)* means the Departmental Appeals Board of the Department of Health and Human Services.

### § 17.5 Complaint.

(a) The Center with principal jurisdiction over the matter involved shall begin all administrative civil money penalty actions by serving on the respondent(s) a complaint signed by the Office of the Chief Counsel attorney for the Center and by filing a copy of the complaint with the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(b) The complaint shall state:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the identification of violations that are the basis for the alleged liability, and the reasons that the respondent is responsible for the violations;

(2) The amount of penalties and assessments that the Center is seeking;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the respondent's right to request a hearing by filing an answer and to retain counsel to represent the respondent; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the proposed amount of penalties and assessments, as provided in § 17.11.

(c) The Center may, on motion, subsequently amend its complaint to conform with the evidence adduced during the administrative process, as justice may require.

(d) The presiding officer will be assigned to the case upon the filing of the complaint under this part.

EFFECTIVE DATE NOTE: At 79 FR 6091, Feb. 3, 2014, paragraph (a) of § 17.5 was revised, effective June 18, 2014. For the convenience of the user, the revised text is set forth as follows:

### § 17.5 Complaint.

(a) The Center with principal jurisdiction over the matter involved shall begin all administrative civil money penalty actions by serving on the respondent(s) a complaint signed by the Office of the Chief Counsel attorney for the Center and by filing a copy of the complaint with the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. For a civil money penalty action against retailers of tobacco products, the complaint may be signed by any Agency employee designated by the Chief Counsel.

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### § 17.7 Service of complaint.

(a) Service of a complaint may be made by:

(1) Certified or registered mail or similar mail delivery service with a return receipt record reflecting receipt; or

(2) Delivery in person to:

(i) An individual respondent; or

(ii) An officer or managing or general agent in the case of a corporation or unincorporated business.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit or declaration under penalty of perjury of the individual serving the complaint by personal delivery;

(2) A United States Postal Service or similar mail delivery service return receipt record reflecting receipt; or

(3) Written acknowledgment of receipt by the respondent or by the respondent's counsel or authorized representative or agent.

### § 17.9 Answer.

(a) The respondent may request a hearing by filing an answer with the Division of Dockets Management